

CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH

Original Application No. 1217/96

Transfer Application No.

Date of Decision 19.2.1997

B.N.Rao

Petitioner/s

Shri S.N.Pillai

Advocate for
the Petitioners

Versus

Union of India & Ors.

Respondent/s

Shri P.G.Zare

Advocate for
the Respondents

CORAM :

Hon'ble Shri. M.R.Kolhatkar, Member (A)

Hon'ble Shri.

- (1) To be referred to the Reporter or not ?
- (2) Whether it needs to be circulated to other Benches of the Tribunal ?

M.R.Kolhatkar
(M.R.KOLHATKAR)
MEMBER (A)

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH, MUMBAI

OA.NO. 1217/96

Wednesday this the 19th day of February, 1997

CORAM : Hon'ble Shri M.R.Kolhatkar, Member (A)

B.N.Rao
(retd. Mail Guard, Central Railway,
Mumbai CST),
residing at RB/III/B-29,
Central Rly. Colony,
Byculla, Mumbai.

By Advocate Shri S.N.Pillai

... Applicant

V/S.

1. Union of India through
The General Manager,
Central Railway,
CST, Mumbai.
2. The Divisional Railway
Manager, Mumbai Division,
Central Railway, CST,
Mumbai.

By Advocate Shri P.G.Zare

... Respondents

O R D E R (ORAL)

(Per: Shri M.R.Kolhatkar, Member (A))

The applicant retired on 30.10.1996. He is in occupation of Railway Quarter bearing No. MS/RB/III-B-29 at Byculla which he has not vacated. From the statement of settlement, it has been indicated that DCRG is with-held on the ground of quarter not being vacated. The applicant states that he is in personal difficulties and he is in need of DCRG amounting to Rs.1,25,582/- to pay the liability in connection with cost of a flat at Madras booked by him with the Indian Railways Welfare Organisation.

He, therefore, seeks the relief of directing the respondents to release the amount of DCRG along with interest from the date of retirement. He states that he has no wish to remain in occupation of the flat beyond the permissible period of 8 months.

2. The respondents have opposed the OA. They relied on the Circular of Railway Board No. E(NG)/90/QR 3-6 dated 31.12.1990. In Para 4 of it, it is stated that :-

" Taking into account all the aspects, the extent to which gratuity can be withheld in cases of non-vacation of railway quarters has been reviewed and it has been decided that retirement/death gratuity or special contribution to P.F., as the case may be, should be withheld in full for non-vacation railway quarters not only after superannuation but in all cases of cessation of services, namely, voluntary retirement, death etc."

They also relied on the judgement in OA.NO. 552/95 decided on 15.11.1996, Mahadev Singh vs. Union of India.

3. The contention of the counsel for the applicant is that the corresponding Railway Circular about cent percent withholding of DCRG was held as illegal by Wazir Chand's judgement, reported in Full Bench Judgements by Bahari Brothers vol.II p. 287 and therefore this Tribunal can not give effect to Circular dated 31.12.1990 and moreover, the Tribunal may also consider the case on equitable grounds which jurisdiction Tribunal possesses as held by Supreme Court in the case of State of Orissa & Ors. vs. Sukanti Mohapatra & Ors. 1993 (3) SLJ 6.

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4. He also contends that judgement of Mahadev Singh is not applicable because the case was mainly decided on the footing that the applicant did not approach the Tribunal with clean hands.

5. Let me therefore consider what was decided by Wazir Chand. Wazir Chand in Para 11 has referred to three communications. The first is the Railway Board communication about DCRG which was issued in 1982. The second Railway Board communication is on the subject of "Unauthorised retention of Railway quarters" dated 24.4.1982 which is quoted at page 294 & 295. The 3rd communication is dated 4.5.1982 which issued by the General Manager, Northern Railway. The Full Bench noted that the Railway Board Circular dated 24.4.1982 only referred to appropriate hold-back["] of the amount whereas the Northern Railway Circular dated 4.5.1982 talks of withholding of the entire amount of DCRG. Therefore, the Wazir Chand's judgement struck down Northern Railway Circular directing 100% withholding of amount of DCRG because it was not in accordance with the existing instructions and also because the G.M. of the Zonal Railway cannot issue instructions which are inconsistent with instructions of Railway Board. It, therefore, appears to me ~~is~~^{is} that the Circular dated 31.12.1990 was not^{is} issue in Wazir Chand's case. Wazir Chand interpreted the Northern Railway Circular which was struck down. It appears to me that Wazir Chand does not help the applicant when he contends that the Tribunal should not give effect to the Circular dated 31.12.1990. I also note that applicant has not challenged vires of circular dated 31.12.1990.

6. The next submission of the applicant is that this Tribunal may direct the Railway administration in equity, & irrespective of the Circular dated 31.12.1990, to pay DCRG because the applicant is in genuine difficulty. Under the rules, a retired railway servant is allowed to occupy the quarters for first four months on normal rent and for next four months, subject to permission, on double the normal rent. This Tribunal may or may not have powers in equity jurisdiction because there are conflicting judgements. E.g. in Parmanand's case it was held that Tribunal cannot interfere with penalty on grounds of equity. There was another case regarding appointment of teachers in Bihar in which there was a difference of opinion between Hon'ble Justice Hansaria and Hon'ble Justice Ramaswamy and the case was referred to a larger bench and I am not aware that it has been decided.

7. For the present, the question before me is whether in the facts and circumstances of the case I should direct the respondents to release the amount of DCRG irrespective of statutory rules in this regard. I am of the view that I cannot do so. In my view, therefore, the OA has no merit and it is therefore dismissed. There would be no order as to costs.

M.R. Kolhatkar

(M.R. KOLHATKAR)
MEMBER (A)

mrj.